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The Internet Archive Provides a Model of Free Knowledge for All

BY
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The ongoing legal battle between the Internet Archive, an online library, and the Big Four publishers over licensing and copyright should concern everyone. At stake in the dispute is the possibility of free access to knowledge for all.

Proponents of digital libraries gather on the steps in front of the Internet Archive. (Courtesy of Chris Freeland / The Internet Archive)

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What is the future of the library in times of digital reading? The Internet Archive, a digital library aiming to make knowledge accessible to everyone, was sued by four major publishers in March 2020 — it lost its case in December, although the company is attempting to appeal the result.

In March last year, a judge at the Southern District of New York court ruled that the Internet Archive was breaking the law after four of America's largest publishers filed a lawsuit against it. They asked the judge to force the Internet Archive to stop all forms of lending and to destroy the digital books. What the ruling means for digital reading remains to be seen. The Internet Archive has appealed the decision. Its founder, Brewster Kahle, called the ruling "a blow to libraries, readers, and authors." The CEO of the Authors Guild, Mary Rasenberger, on the other hand, called the ruling "a victory not just for publishers, but for all authors."

A Public Library

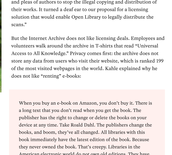
Where do authors stand on this issue? Is a digital library a threat to their income, as the Authors Guild states, or is making access to books a difficult a threat to equal opportunity and democracy, as the Internet Archive claims? During my visit to the United States for the publication of my second novel, I spoke with Kahle. "The Internet Archive is a nonprofit library with a mission to create universal access to all knowledge," he said as he guided me through the former San Francisco church that serves as its headquarters. That day, Kahle was heading the weekly public tour of the building, showing the scanners that were used to scan the forty million texts the archive offers to its readers. The Internet Archive lent approximately seventy thousand books per day in 2022 (via the site archive.org and openlibrary.org) and is used by students and readers worldwide. Says Kahle:

> This was the dream of the internet I believed in. The internet as a global brain. A universal encyclopedia. The Internet Archive tries to fill in as many puzzle pieces as possible to make this dream come true. We will not be able to solve all the problems. But we can solve a few problems. Something we found that was really missing was persistence. People publish things, but it doesn't persist. So we decided to capture all web pages that are publicly available. And that has become very useful. It's called the Way Back Machine. Then we started with television, books, magazines, music, software. That has become a library online. All the books we offer are older than five years. And we have to our storage a physical copy of everything we offer digitally.

These books are lent through "controlled digital lending," which means that the books offered by the Internet Archive can only be read by one reader at a time. During the pandemic, the archive broke this rule: under the name of "The National Emergency Library," the books could be temporarily borrowed by several people at the same time. It only lasted ten weeks, but it was used by readers worldwide. And they were instantly used by the four publishers.

"HarperCollins, Penguin, Random House, and Wiley," Kahle says their names with a note of resignation in his voice. "They have way too much power, these big publishers. They have so much control over what people say and what is written about, so much that you often don't even hear the criticism."

HarperCollins is owned by Rupert Murdoch's News Corporation, which owns Fox, National Geographic, Sky, Hulu, and Vogue, among others. Random House belongs to Bertelsmann, which also owns RTL Group and music company BMG, among others. These publishers base their lawsuit on the fair use copyright law.



Brewster Kahle in a book storage in Richmond, California, on February 21, 2012. (Lianne Milton / Redux / the New York Times Syndication / AMP)

According to the archive, that law gives them the right to lend books, under the fair use principle. The judge stated that the archive does not meet the fair use principles, and it "profits from exploiting the copyrighted material without paying the customary price."

"We do pay for the books," Kahle explained. "We buy these books from libraries that bought them at full price, and then we digitize them. And we keep the physical book, we make the digital book available for one person at a time. We would much rather do this with e-books! But these publishers don't want to sell e-books. They prefer to sell licenses."

Licenses were also the Authors Guild's solution of choice. "For years, the Internet Archive has shown a shocking disregard for the process and pleas of authors to stop the illegal copying and distribution of their works. It turned a deaf ear to our proposal for a licensing solution that would enable Open Library to legally distribute the scans."

But the Internet Archive does not like licensing deals. Employees and volunteers walk around the archive in T-shirts that read "Universal Access to All Knowledge." Privacy comes first: the archive does not store any data from users who visit their website, which is ranked 199 of the most visited webpages in the world. Kahle explained why he does not like "renting" e-books:

> When you buy an e-book on Amazon, you don't buy it. There is a long text that you don't read when you get the book. The publisher has the right to change or delete the books on your device at any time. Take Roald Dahl. The publishers change the words, and boom, they've all changed. All libraries with this book immediately have the latest edition of the book. Because they never owned the book. That's creepy. Libraries in the American electronic world do not own old editions. They have, they rent, a meaning thing. They really only have the right to send their members to the publishers' servers. There is no privacy . . . everything goes into the publishers' databases. And the smaller independent publishers don't have their own distribution mechanisms. The big publishers make the platforms. We complain about the Twitters and Facebooks and Googles and Apples, and yes, they have too much power. But these big publishers have much more power, and they have power over those who write.

Precarity of Authors

The publishers suing the Internet Archive claim they are doing so on behalf of authors, and the Authors Guild states they are supporting the lawsuit for the same reasons. The authors themselves seem relatively silent on this subject. Some writers who have spoken out publicly against the Internet Archive have since retracted their comments.

A petition has been signed by a thousand writers, including Naomi Klein and Neil Gaiman, expressing their support for the Internet Archive. There is also a petition signed by six thousand writers, organized by the Authors Guild, accusing the Internet Archive of theft. But the outpouring of powerful opinion pieces seen on other topics affecting writers, such as the rise of artificial intelligence, the Hollywood writers' strike, and American book bans, hasn't happened.

> "What is at stake when it comes to the Internet Archive lawsuit? Not the meager income as authors — an issue for which the monopolistic publishing industry is primarily to blame."

Perhaps this is because writers, and bookstores and smaller publishers, are in such a precarious position? A Writers Guild survey of five thousand American authors found a median annual income of $6,080, while among full-time writers it was $20,300. The idea that the writer's income could be further eroded by digital distribution is worrying for many in the industry. Chris Heiser, founder of my American publisher Unnamed Press, said: "If the e-book is not protected, we will have big problems as a small independent publisher. We have to make money. And the bookstores do too. The smaller publishers and bookstores make sure interesting and unusual books can be published, and they are struggling."

Supporting the archive could be seen as a denial of the untenable financial position of people in the book world and the hard, sincere work of the people who make and sell the books. But the suggestion by the four publishers that offering expensive and unreliable licensing deals to libraries is the only solution for more income and a better situation for authors, is incorrect.

There's a hidden income that the authors do not profit from: by participating in the systems that publishers and distribution platforms offer the readers also pay by giving access to their data. This is not a source of revenue generation that authors have an interest in preserving. Furthermore, there is little evidence that library lending has a negative effect on book sales. Expensive licensing deals, the proposal put forward by representatives of the Big Four publishers, mean that libraries will have to offer fewer e-books to their readers, which in turn means fewer readers, which is not benefiting authors. Finally, the licensing structures are a vehicle for censoring and retracting books. In 2022, Wiley withdrew thirteen hundred academic e-books from libraries' shelves at the beginning of the academic year, forcing students to buy the expensive books they needed for their studies.

Dave Hansen of the Authors Alliance, an alternative author union that has voiced support for the Internet Archive, says:

> The price libraries pay for books is much higher than ordinary consumers pay; for e-books it can even be three hundred times more, just for one book license. Scientific books are particularly difficult for readers to access, and the major publishers exploit their position of power. At archive.org you can read the books, there is a wide range that is permanent and accessible to everyone, and no privacy is infringed.

Journalist Maria Bustillos, who supports the Internet Archive, has suggested an alternative strategy for writers seeking to increase access to their work: "Do not sign a contract with publishers unless they guarantee, in writing, to sell permanent e-book copies of your work – not via license, not via 'perpetual license,' but absolute, permanently ownable for keeps e-books, to libraries."

What is at stake when it comes to the Internet Archive lawsuit? Not the meager income as authors — an issue for which the monopolistic publishing industry primarily is to blame. What is at stake is access to knowledge for everyone, equal opportunity, and the development of imagination. As Kahle puts it: "You allow youth to have television and social media poured straight into their brain, but you make access to other culture difficult. Is that smart? That is not smart."

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